IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:30-10-2006

Coram:

The Honourable Mr. A.P. SHAH, The Chief Justice
and
The Honourable Mr. Justice K. CHANDRU

W.A. No.956 of 2006
M.P. No.1 of 2006

1. Food Corporation of India
rep. by the Chairman and
Managing Director
Headquarters, 16-20 Barakhama Lane
New Delhi 110 001

2. The Executive Director (South)
Food Corporation of India
Zonal Office
3, Haddows Road
Chennai 600 006

3. The General Manager
Food Corporation of India
Regional Office
Greams Road
Chennai 600 006 .... Appellants (Respondents in WP No. 4421/2006)

:versus:

1. N.S. Balasubramanian
2. Koshy Kuruvilla
3. A.R. Subramanian
4. B. Balasubramania Iyer
5. V. Marimuthu
6. E. Selvanayagam
7. T.R. Jaya Lakshmi
8. Siva Shanmugham
9. C.R. Narayana Pillai
10. V. Prakasham
11. C.P. Sukumar
12. K. Chandra
13. D. Uma Devi
14. M. Papaiah Naidu
15. S. Meenakshi Sundaram

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16. N. Sundaram
17. P.R. Anantha Raman
18. V. Chellian
19. P.M. Rudramani ... Respondents
(Petitioners in - do -)

- - - - -

Appeal under Cl.15 of the Letters Patent against the order dated 17-
2006 in W.P. No.4421 of 2006 presented under Article 226 of t
Constitution of India to issue a Writ of Mandamus, directing t
respondents to extend the benefits arising from the Judgment of t
kerala High Court in OP No. 13651/01 dated 20.10.03 and confirmed by t
Division Bench of the Kerala High Court in WA No. 293/04 as well as
the Supreme Court in SLP No. 20319 of 2005 to the petitioners herei
who are identically situated by stepping up of the petitioner's pay
par with that of their junior Rajan C. Abraham with effect from 2.1.19
with all the consequential benefits including arrears of pay etc.

For Appellants :: Mr. R. Muthukumarasamy
Senior Counsel for
Mr. R.D. Audikesavalu

For Respondents :: Mr. Vijay Narayan
Senior Counsel for
Mr. R. Parthiban

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JUDGMENT

(Delivered by the Honourable The Chief Justice)

The appellant, M/s. Food Corporation of India, has preferred th
appeal, challenging the order dated 17-4-2006 passed by the learn
single Judge in W.P. No.4421 of 2006.

2. The facts, in brief, leading to this appeal are as follows:

Respondents herein entered into the services of the appella
Corporation as Assistants-Grade III, who were subsequently promoted
Assistants-Grade II and then as Assistants-Grade I in the year 1977-7
One Rajan C. Abraham, who was junior to the respondents, was promoted
Assistant-Grade I in the year 1985. Subsequent to the wage revisio
which took place with effect from 1-2-1992, Rajan C. Abraham start
drawing more pay than the respondents with effect from 2-1-1993.

In the circumstances, the respondents herein as well as oth
senior employees working in the Kerala Region made representations
the Regional/Zonal/Head Office for rectification of the pay anomaly
stepping up their pay on par with that of the above junior. T
appellant Corporation issued a circular in the year 1997 laying do

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certain conditions for rectifying the pay anomaly. Since the responder and other senior employees working in the Kerala Region satisfied t conditions, their pay in the post of Assistant-Grade I was stepped up par with that of their junior Rajan C. Abraham with effect from 2-1-19 and they were also paid the arrears of salary upon refixation of the pay.

After a gap of more than four years, the appellant Corporati initiated action for cancelling the order stepping up the pay passed respect of certain senior employees working in the Kerala Region sin the appellant Corporation felt that those employees were not entitl for stepping up of their pay on par with Rajan C. Abraham.

Challenging the action of the appellant Corporation a petitio O.P. No.13651 of 2001 (A), was filed before the Kerala High Court. T said petition was allowed by the learned single Judge by order dated 2 10-2003. Against the above order, the appellant Corporation preferr an appeal, W.A. No.293 of 2004. A Division Bench of the Kerala Hi Court, by order dated 2-6-2005, confirmed the order of the learn single Judge and held that the petitioners therein, viz. the seni employees were entitled for stepping up of their pay on par with that their junior and quashed the pay step down order passed by the appella Corporation. Aggrieved by the aforesaid order, the appella Corporation preferred a Special Leave Petition (S.L.P. (C) No.20319 2005) before the Supreme Court and the same was dismissed by order dat 18-10-2005.

Consequently, the original order of stepping up of pay issued favour of the senior employees, whereby their pay was brought on p with that of their junior Rajan C. Abraham, was restored and the arrea of pay were also paid. In the mean while, the respondents herein, w are similarly placed like the petitioners before the Kerala High Cou and whose pay was also stepped up on par with that of their junior Raj C. Abraham, were issued with a notice by the appellant Corporation f re-fixing their pay. The respondents gave a reply to this notice merits and also brought to the notice of the appellant Corporation th the cases filed by the identically placed persons were pendi adjudication before the Division Bench of the Kerala High Court and ti such time no order may be passed to cancel the original order stepping up of pay. Despite this request the appellant Corporati cancelled the original order of stepping up of pay and recovered t excess pay allegedly drawn by the respondents.

All the respondents, except respondents 3, 17, 18 and 19, opted f voluntary retirement in the year 2004. The alleged excess pay drawn w recovered in one lump sum from their retiral benefits. The amou recovered on an average comes to Rs.75,000/- to Rs.80,000/-.

It is the case of the respondents that they are senior to Rajan

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Abraham and in fact some of them are senior to those employees who ha
filed the petition before the Kerala High Court. It is also their ca
that by letters dated 8-11-2005, 22-11-2005 and 7-12-2005 addressed
the Zonal Office in Chennai to the Head Quarters in New Delhi, it h
been clearly mentioned that the respondents are identically situated
the petitioners before the Kerala High Court and advice was sought as
whether the benefit of the Kerala High Court judgment may be extended
the petitioner as well.

It appears that the respondents made a number of representations
rectify the anomaly in the pay and to restore the step-up pay in t
light of the decision of the learned single Judge of the Kerala Hi
Court, which has been confirmed by the Division Bench of the Kerala Hi
Court and by the Supreme Court of India. Despite the representatio
given by the respondents, no orders were passed by the appella
Corporation to restore the original order of stepping up their pay
par with that of their junior Rajan C. Abraham. The respondent
therefore, filed the aforesaid writ petition seeking a Writ of Mandamu
directing the appellant Corporation to extend the benefits arising fr
the judgment of the Kerala High Court in O.P. No.13651 of 2001 dated 2
10-2003 and confirmed by the Division Bench of the Kerala High Court
W.A. No.293 of 2004 as well as by the Supreme Court of India In S.L.
(C) No.20319 of 2005 to the respondents herein who are identical
situated by stepping up of their pay on par with that of their juni
Rajan C. Abraham with effect from 2-1-1993 with all consequenti
benefits including arrears of pay, etc. By the order under appeal, t
learned single Judge has allowed the writ petition.

3. Mr. R. Muthukumarasamy, learned senior counsel appearing for t
appellant Corporation contended that the Kerala High Court in the orc
passed in O.P. No.13651 of 2001 did not declare any law nor has
decided any principle of law so as to render the same applicable to a
similarly placed employees of the appellant Corporation and, therefor
the learned single Judge has committed an error in granting the reli
to the respondents relying upon the decision of the Kerala High Cour
Learned senior counsel submitted that Circular No.13 dated 9-7-1997 w
wrongly applied and the said mistake having been found, the stepping
of pay was cancelled and recovery was made. As an alternative ple
learned senior counsel, relying upon the decision of the Supreme Cou
in A.K. BINDAL v. UNION OF INDIA (AIR 2003 SC 2189), contended th
respondents 1 to 16 having accepted the special compensation amou
under the Voluntary Retirement Scheme, which brought about a cessati
of employer-employee relationship, have foregone all their rights and
is not open to them to contend that they had to exercise their opti
under any compulsion. In that connection, learned senior counsel al
drew our attention to the undertaking given by the respondents 1 to
as per the Voluntary Retirement Scheme that amount payable by t
employees towards the House Building Advance/Conveyance Allowance/Lea
Travel Concession and other dues may be recovered from them.

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4. At the out set, we may mention that there is no dispute that t respondents before us are similarly placed like the petitioners in O. No.13651 of 2001 before the Kerala High Court, who were granted t relief of stepping up of their pay on par with that of their juni Rajan C. Abraham with effect from 2-1-1993. The respondents in the affidavit have categorically asserted that they are also similar placed and that their salary was also stepped up from 2-1-1993 a subsequently the order of recovery was made by the appellant Corporati by cancelling the order of stepping up of their salary. In the counte affidavit filed by the appellant Corporation, it is nowhere stated th the claim of the respondents are not similar to that of the petitione before the Kerala High Court. Therefore, the respondents are entitl to be treated equally with the petitioners before the Kerala High Cour

5. We are unable to accept the contention of the learned seni counsel for the appellant Corporation that the Kerala High Court in O. No.13651 of 2001 has not declared any law nor decided any principle law. A perusal of the order passed by the learned single Judge of t Kerala High Court reveals that the sanction of higher salary to t petitioners therein on par with Rajan C. Abraham was held to be in orc and cancellation of the same was held not justifiable. The Divisi Bench of the Kerala High Court, while confirming the order of t learned single Judge, observed as follows:

> "... the fact remains that Rajan C. Abraham was promoted much later than the petitioners, but he was given a higher scale of pay as Assistant Grade-I. Petitioners were seniors to Rajan C. Abraham and merely because Rajan C. Abraham was involved in a vigilance case, he cannot be given a higher scale than his seniors. The stepping up of pay given to the petitioners as per Ex.P-3 is correct. We fully agree with the reasoning of the learned single Judge."

6. The Special Leave Petition filed by the appellant Corporati against the judgment of the Division Bench of the Kerala High Court w also dismissed on 18-10-2005. There is also no dispute that pursuant the dismissal of the Special Leave Petition by the Supreme Court, t order of the Kerala High Court has been implemented and the arrears pay have been paid to the respective senior employees of the Kera Region of the appellant Corporation.

7. It appears that some of the respondents before us submitted representation on 31-10-2005 for refund of the amount recovered pursua to the cancellation order and also prayed for restoring their pay. T Law Department of the appellant Corporation gave an opinion that wh similarly placed persons are denied the benefit for want of court orde it will lead to multiplicity of proceedings and the order passed in W. No.293 of 2004 by the Division Bench of the Kerala High Court is like to be followed and that would lead to infructuous/avoidable expenses f

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legal cases. The relevant portion of the report of the legal divisi is as follows:

> "... Legal Division has, therefore, opined that it would be appropriate to extend similar benefit to all similarly placed persons to that of the petitioners. Zonal Finance also concurred with the above views. As the Headquarters has been monitoring the progress of the case from time to time and issuing directions and guidelines at the various stages right from the beginning in the case filed by Shri C. Madhavan Pillai and others. W.P. No.10651/2000 filed by Shri B. Gurumurthy and 8 others, W.P. No.26440/2001 filed by Jacob Zachariah, W.P. No.21084/2003 filed by Shri L.L.N. Murthy and 4 others, it is felt that the Head Office may consider the case of non-petitioners in South Zone for extension of similar benefits on par with the petitioners in O.P. No.13651/2001 and also to the petitioners in various W.Ps. W.P. No.10651/2000 filed by Shri B. Gurumurthy and others 26440/2001 filed by Jacob Zachariah and 21084/2003 filed by Shri L.L.N. Murthy and 4 others in A.P. High Court and communicate decision with regard to extension of the benefits in terms of Supreme Court in SLP No.20319/2005 or otherwise at an early date."

8. The Finance Department of the appellant Corporation al concurred with the view expressed by the Law Department and the same made clear in the letter dated 22-11-2005. It is thus clear that t issue is squarely covered by the decision of the Kerala High Cour which has been confirmed by the Supreme Court.

9. Learned senior counsel for the appellant Corporation next argu that the respondents 1 to 16 having accepted the compensation under t Voluntary Retirement Scheme, they are not entitled to maintain the wr petition. In support of his submission, learned senior counsel reli on the decision of the Supreme Court in A.K. Bindal case, cited supr In that case, the petitioners before the Supreme Court were t employees of the Fertilizer Corporation of India (FCI) and Hindust Fertilizer Corporation Limited (HFC), which were continuously sustaini losses. When the Government announced a liberalised Volunta Retirement Scheme for the employees of the Central Public Sect Undertakings on 6-11-2001 under which the voluntary retireme compensation on the basis of their existing pay (basic + DA) w increased by 100% and 50% respectively, almost 99 per cent of t employees of FCI and HFC had opted for the Voluntary Retirement Schem Before the Supreme Court, it was contended by the employees that unc the Scheme the total compensation amount has to be calculated on t basis of existing pay scale and as there was no revision of pay scal since 1992, the petitioners therein had got a very small amount. It w further contended that there can be no waiver of fundamental rights a even if an employee has opted for the voluntary retirement scheme, h

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taken the amount and left the company, it would not mean that he h forgone his right to claim the salary which he was entitled to g during the period when he was an employee of the company. The Cou found that while framing the Voluntary Retirement Scheme the grievan of the employees regarding non-revision of their pay scale has be taken into consideration and it was for this reason that in the secc Voluntary Retirement Scheme announced on 6-11-2001 ex gratia payment respect of employees on pay scales at 1-1-1987 level has been increas by 100% and for employees on pay scales at 1-1-1992 level, it has be increased by 50%. Under the circumstances, the Court held that t petitioners, with their eyes wide open and without any demur, havi accepted the special compensation under the liberalised Volunta Retirement Scheme, resulting in the complete cessation of the jur relationship of employer-employee, are not entitled now to make any ki of protest regarding their past rights based upon revision of pay scal The relevant observations of the Supreme Court are found in paragrap 33 and 34, which read as follows:

> "The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency. The office memorandum dated 5-5-2000 issued by the Government of India provided that for sick and unviable units, the VRS package of the Department of Heavy Industry will be adopted. Under this Scheme an employee is entitled to an ex gratia payment equivalent to 45 days' emoluments (pay + DA) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before the normal date of retirement, whichever is less. This is in addition to terminal benefits. The Government was conscious about the fact that the pay scales of some of the PSUs had not been revised with effect from 1-1-1992 and therefore it has provided adequate compensation in that regard in the second VRS which was announced for all Central Public Sector undertakings on 6-11-2001. Clause (a) of the Scheme reads as under:
>
> '(a) Ex gratia payment in respect of employees on pay scales at 1-1-1987 and 1-1-1992 levels, computed on their existing pay scales in accordance with the extant Scheme, shall be increased by 100% and 50% respectively.'
>
> This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as 'golden handshake'. The

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main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated."

10. In the instance case, the respondents are not claiming any r right and their claim is only to refund the recovered amount, which w rightly sanctioned and paid by the appellant Corporation. Therefore, t only issue in the present case is whether the appellant Corporation w justified in deducting the amount from the salaries of the responder on the basis that they are not eligible for stepping up pay.

11. We are of the view that the respondents' claim is similar the claim of the petitioners before the Kerala High Court. When t petitioners before the Kerala High Court were paid the recovered amou pursuant to the order passed by the Kerala High Court, which has be confirmed by the Apex Court, the respondents herein are also entitl for the refund of the recovered amount and the arrears of pay. Ev assuming that the appellant Corporation had stepped up the pay of t respondents on the wrong understanding of the circular dated 9-7-1997 contended by the learned counsel for the appellant Corporation, t respondents have not misrepresented anything and the higher pay havi been given, it is not open to the appellant Corporation to recover t amount as held by the Supreme Court in the decision in SAHIB RAM STATE OF HARYANA (1995 Suppl. SCC 18) and the decision of this Court S.A. KANTHIMATHI v. DIRECTOR OF SCHOOL EDUCATION, MADRAS AND OTHE (2006 [1] MLJ 695). The undertaking given by the employees relates House Building Advance, Conveyance Allowance, Leave Travel Concessio etc. and cannot be used to justify unauthorised and illegal deductio made from the amounts payable to the employees.

12. In the result, the appeal fails and accordingly it is dismiss with costs. The appellant Corporation is directed to implement t order of this Court within a period of six weeks from today. Connect miscellaneous petition is closed.

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WRIT APPEAL NO. 956 OF 2006

MEMORANDUM OF CASES

Respondent Costs	Rs.	P.
Stamp for Vakalatnama	10	00
Advocate's fee Certificate not received	---	
Translation Printing/Typing Charges	NIL	
To be paid by the Petitioner to the Respondent	Rs. 10	00

Jai

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

TO

1. The Chairman and
   Managing Director
   Food Corporation of India
   Headquarters, 16-20 Barakhama Lane
   New Delhi 110 001

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